

BOULDER CANYON PROJECT ADJUSTMENT ACT

An act authorizing the Secretary of the Interior to promulgate and to put into effect charges for electrical energy generated at Boulder Dam, providing for the application of revenues from said project, authorizing the operation of the Boulder Power Plant by the United States directly or through agents, and for other purposes. (Act of July 19, 1940, ch. 643, 54 Stat. 774)

[Sec. 1. Secretary to promulgate charges for energy generated—Charges may be subject to revision.]—The Secretary of the Interior is hereby authorized and directed to, and he shall, promulgate charges, on the basis of computation thereof, for electrical energy generated at Boulder Dam during the period beginning June 1, 1937, and ending May 31, 1987, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes:

(a) To meet the cost of operation and maintenance, and to provide for replacements, of the project during the period beginning June 1, 1937, and ending May 31, 1987;

(b) To repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the project made prior to June 1, 1937, within fifty years from that date (excluding advances allocated to flood control by section 2(b) of the Project Act, which shall be repayable as provided in section 7 hereof), and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987;

(c) To provide \$600,000 for each of the years and for the purposes specified in section 2(c) hereof; and

(d) To provide \$500,000 for each of the years and for the purposes specified in section 2(d) hereof.

Such charges may be made subject to revisions and adjustments at such times, to such extent, and in such manner, as by the terms of their promulgation the Secretary shall prescribe. (54 Stat. 774; 43 U.S.C. § 618)

NOTES OF OPINIONS

1. Upstream reservoirs

Appropriations for the Colorado River Storage project are authorized to be expended to meet costs of deficiencies in the generation of energy at the Hoover Dam powerplant occasioned by the necessity to fill Colorado River Storage project reservoirs, if the Secretary of the Interior concludes that such a step is appropriate to maintaining a reasonable schedule in meeting the statutory payout requirements of both Hoover Dam and Glen Canyon Dam imposed by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Colorado River Storage

Project Act. Memorandum of Associate Solicitor Weinberg, July 17, 1962.

If an upstream project, such as the proposed Central Arizona project and Bridge Canyon project in the Lower Colorado River Basin, interferes with the statutory responsibility of the Secretary to recover the costs of Hoover Dam by June 1, 1987, or to recover the costs of Davis and Parker Dams within a reasonable period of time, then the cost of such interference should be included as one of the "costs" of the new upstream development under section 9(a) of the Reclamation Project Act of 1939. Memorandum of Chief Counsel Fix, October 9, 1947.

Sec. 2. [Receipts to be paid into Colorado River Dam Fund—To be available for (a) operation and maintenance and replacements, (b) repayment to Treasury, (c) payments to Arizona and Nevada and if taxes are levied by Arizona or Nevada payments to them to be reduced an equivalent amount, and (d) transfer of funds to the Colorado River Development Fund for studies, investigations, and construction.]—All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available for:

(a) Annual appropriation for the operation, maintenance, and replacements of the project, including emergency replacements necessary to insure continuous operations;

(b) Repayment to the Treasury, with interest (after making provision for the payments and transfers provided in subdivisions (c) and (d) hereof), of advances to the Colorado River Dam Fund for the construction of the project (excluding the amount allocated to flood control by section 2(b) of the Project Act), and any readvances made to said fund under section 5 hereof; and

(c) Payment subject to the provisions of section 3 hereof, in commutation of the payments now provided for the States of Arizona and Nevada in section 4 (b) of the Project Act, to each of said States of the sum of \$300,000 for each year of operation, beginning with the year of operation ending May 31, 1938, and continuing annually thereafter until and including the year of operation ending May 31, 1987, and such payments for any year of operation which shall have expired at the time when this subdivision (c) shall become effective shall be due immediately, and be paid, without interests, as expeditiously as administration of this Act will permit, and each such payment for subsequent years of operation shall be made on or before July 31, following the close of the year of operation for which it is made. All such payments shall be made from revenues hereafter received in the Colorado River Dam Fund.

Notwithstanding the foregoing provisions of this subsection, in the event that there are levied and collected by or under authority of Arizona or Nevada or by any lawful taxing political subdivision thereof, taxes upon—

(i) the project as herein defined;

(ii) the electrical energy generated at Boulder Dam by means of facilities, machinery, or equipment both owned and operated by the United States, or owned by the United States and operated under contract with the United States;

(iii) the privilege of generating or transforming such electrical energy or of use of such facilities, machinery, or equipment or of falling water for such generation or transforming; or

(iv) the transmission or control of such electrical energy so generated or transformed (as distinguished from the transmission lines and other physical properties used for such transmission or control) or the use of such transmission lines or other physical properties for such transmission or control,

payments made hereunder to the State by or under the authority of which such taxes are collected shall be reduced by an amount equivalent to such taxes. Nothing herein shall in anywise impair the right of either the State of Arizona or the State of Nevada, or any lawful taxing political subdivision of either of them,

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to collect nondiscriminatory taxes upon that portion of the transmission lines and all other physical properties, situated within such State and such political subdivision, respectively, and belonging to any of the lessees and/or allottees under the Project Act and/or under this Act, and nothing herein shall exempt or be construed so as to exempt any such property from nondiscriminatory taxation, all in the manner provided by the constitution and laws of such State. Sums, if any, received by each State under the provisions of the Project Act shall be deducted from the first payment or payments to said State authorized by this Act. Payments under this section 2(c) shall be deemed contractual obligations of the United States, subject to the provision of section 3 of this Act.

(d) Transfer, subject to the provisions of section 3 hereof, from the Colorado River Dam Fund to a special fund in the Treasury, hereby established and designated the "Colorado River Development Fund", of the sum of \$500,000 for the year of operation ending May 31, 1938, and the like sum of \$500,000 for each year of operation thereafter, until and including the year of operation ending May 31, 1987. The transfer of the said sum of \$500,000 for each year of operation shall be made on or before July 31 next following the close of the year of operation for which it is made: *Provided*, That any such transfer for any year of operation which shall have ended at the time this section 2(d) shall become effective, shall be made, without interest, from revenues received in the Colorado River Dam Fund, as expeditiously as administration of this Act will permit, and without readvances from the general funds of the Treasury. Receipts of the Colorado River Development Fund for the years of operation ending in 1938, 1939, and 1940 (or in the event of reduced receipts during any of said years, due to adjustments under section 3 hereof, then the first receipts of said fund up to \$1,500,000), are authorized to be appropriated only for the continuation and extension, under the direction of the Secretary, of studies and investigations by the Bureau of Reclamation for the formulation of a comprehensive plan for the utilization of waters of the Colorado River system for irrigation, electrical power, and other purposes, in the States of the upper division and the States of the lower division, including studies of quantity and quality of water and all other relevant factors. The next such receipts up to and including the receipts for the year of operation ending in 1955 are authorized to be appropriated only for the investigation and construction of projects for such utilization in and equitably distributed among the four States of the upper division: *Provided, however*, That in view of distributions heretofore made, and in order to expedite the development and utilization of water projects within all of the States of the upper division, the distribution of such funds for use in the fiscal years 1949 to 1955, inclusive, shall be on a basis which is as nearly equal as practicable. Such receipts for the years of operation ending in 1956 to 1987, inclusive, are authorized to be appropriated for the investigation and construction of projects for such utilization in and equitably distributed among the States of the upper division and the States of the lower division. The terms "Colorado River system", "States of the upper division", and "States of the lower division" as so used shall have the respective meanings defined in the Colorado River compact mentioned in the Project Act. Such projects shall be only such as are found by the Secretary to be

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physically feasible, economically justified, and consistent with such formulation of a comprehensive plan. Nothing in this Act shall be construed so as to prevent the authorization and construction of any such projects prior to the completion of said plan of comprehensive development; nor shall this Act be construed as affecting the right of any State to proceed independently of this Act or its provisions with the investigation or construction of any project or projects. Transfers under this section 2(d) shall be deemed contractual obligations of the United States, subject to the provisions of section 3 of this Act.

(e) Annual appropriation for the fiscal years 1948, 1949, 1950, 1951 for payment of the Boulder City School District, as reimbursement for the actual cost of instruction, during each school year, in the schools operated by said district, of pupils who are dependents of any employee or employees of the United States living in or in the immediate vicinity of Boulder City, such reimbursement not to exceed the sum of \$65 per semester per pupil and to be payable semiannually, after the term of instruction in each semester has been completed, under regulation to be prescribed by the Secretary. (54 Stat. 774; Act of May 14, 1948. 62 Stat. 235; Act of June 1, 1948, 62 Stat. 284; 43 U.S.C. § 618a)

EXPLANATORY NOTES

1948 Amendment. The Act of May 14, 1948, 62 Stat. 235, amended section 2 by adding to it subsection (e). The 1948 Act appears herein in chronological order.

1948 Amendment. Section 1 of the Act of June 1, 1948, 62 Stat. 284, amended subsection 2(d) by adding the second proviso that appears in the text above. The 1948 Act appears herein in chronological order.

Supplementary Provision: Expenditure of Funds. Section 2 of the Act of June 1,

1948, 62 Stat. 284, provides: "The availability of appropriations from the Colorado River Development Fund for the investigation and construction of projects in any of the States of the Colorado River Basin shall not be held to forbid the expenditure of other funds for those purposes in any of those States where such funds are otherwise available therefor." The 1948 Act appears herein in chronological order.

NOTES OF OPINIONS

Investigation costs 2
Revenues "hereafter received" 1

1. Revenues "hereafter received"

The word "hereafter" in the expression "hereafter received" in the first paragraph of section 2(c) of this Act, refers to the period after the Boulder Canyon Project Adjustment Act becomes effective for all purposes under the provisions of section 10 and not to the period subsequent to the date of approval of the Act; and payments to the States of Arizona and Nevada under section 2(c) may be made only out of revenues received in the Colorado River

Dam Fund after the act shall have become fully effective. Dec. Comp. Gen. B-12615 (October 29, 1940).

2. Investigation costs

Costs of investigations made with Colorado River Development Funds are not reimbursable by the water users even though a project investigated with such funds is authorized for construction. Letter of Administrative Assistant Secretary Beasley to Comptroller General, June 11, 1959; Memorandum of Chief Counsel Fix, December 28, 1949.

Sec. 3. [If revenues insufficient, payments to Arizona and Nevada and transfer to Colorado River Development Fund to be proportionately reduced.]—If, by reason of any act of God, or of the public enemy, or any major catastrophe, or any other unforeseen and unavoidable cause, the revenues, for any year of operation, after making provision for costs of operation, maintenance, and the amount to be set aside for said year for replacements, should be

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insufficient to make the payments to the States of Arizona and Nevada and the transfers to the Colorado River Development Fund herein provided for, such payments and transfers shall be proportionately reduced, as the Secretary may find to be necessary by reason thereof. (54 Stat. 776; 43 U.S.C. § 618b)

Sec. 4. (a) [Charges to be applicable as from June 1, 1937, and adjustments made with contractors by means of credits.]—Upon the taking effect of this Act, pursuant to section 10 hereof, the charges, or the basis of computation thereof, promulgated hereunder, shall be applicable as from June 1, 1937, and adjustments of accounts by reason thereof, including charges by and against the United States, shall be made so that the United States and all parties that have contracted for energy, or for the privilege of generating energy, at the project, shall be placed in the same position, as nearly as may be, as determined by the Secretary, that they would have occupied had such charges, or the basis of computation thereof, and the method of operation which may be provided for under section 9 hereof, been effective on June 1, 1937: *Provided*, That such adjustments with contractors shall not be made in cash, but shall be made by means of credits extended over such period as the Secretary may determine.

(b) [If payments to Arizona and Nevada reduced by taxes, adjustments by credits to be made with each allottee for taxes paid by them.]—In the event payments to the States of Arizona and Nevada, or either of them, under section 2(c) hereof, shall be reduced by reason of the collection of taxes mentioned in said section, adjustments shall be made, from time to time, with each allottee which shall have paid any such taxes, by credits or otherwise, for that proportion of the amount of such reductions which the amount of the payments of such taxes by such allottee bears to the total amount of such taxes collected. (54 Stat. 776; 43 U.S.C. § 618c)

Sec. 5. [Readvances to be made by Treasury if Colorado Dam Fund insufficient to meet cost of replacements.]—If at any time there shall be insufficient sums in the Colorado River Dam Fund to meet the cost of replacements, however necessitated, in addition to meeting the other requirements of this Act, or of regulations authorized hereby and promulgated by the Secretary, the Secretary of the Treasury, upon request of the Secretary of the Interior, shall re-advance to the said fund, in amounts not exceeding, in the aggregate, moneys repaid to the Treasury pursuant to Section 2(b) hereof, the amount required for replacements, however necessitated, in excess of the amount currently available therefor in said Colorado River Dam Fund. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums, not exceeding said aggregate amount, as may be necessary to permit the Secretary of the Treasury to make such readvances. All such readvances shall bear interest. (54 Stat. 777; 43 U.S.C. § 618d)

Sec. 6. [Interest to be computed at 3 per centum.]—Whenever by the terms of the Project Act or this Act payment of interest is provided for, and whenever interest shall enter into any computation thereunder, such interest shall be computed at the rate of 3 per centum per annum, compounded annually. (54 Stat. 777; 43 U.S.C. § 618e)

Sec. 7. [First \$25,000,000 advance to be made to flood control without interest—To be repayable 1987 as Congress determines.]—The first \$25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 2(b) of the Project Act and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine. (54 Stat. 777; 43 U.S.C. § 618f)

Sec. 8. [Secretary authorized to promulgate regulations and enter into contracts—No allotments heretofore promulgated to be modified or changed without consent of allottee.]—The Secretary is hereby authorized from time to time to promulgate such regulations and enter into such contracts as he may find necessary or appropriate for carrying out the purposes of this Act and the Project Act, as modified hereby, and, by mutual consent, to terminate or modify any such contract: *Provided, however,* That no allotment of energy to any allottee made by any rule or regulation heretofore promulgated shall be modified or changed without the consent of such allottee. (54 Stat. 777; 43 U.S.C. § 618g)

Sec. 9. [Secretary authorized to negotiate for termination of existing lease of Boulder Power Plant—If lease terminated, operation and maintenance and replacements authorized—Secretary to agree that (a) lessees be designated agents for operation of power plant, (b) agency contract not revocable, and (c) suits or proceedings to restrain termination may be maintained against Secretary.]—The Secretary is hereby authorized to negotiate for and enter into a contract for the termination of the existing lease of the Boulder Power Plant made pursuant to the Project Act, and in the event of such termination the operation and maintenance, and the making of replacements, however necessitated, of the Boulder Power Plant by the United States, directly or through such agent or agents as the Secretary may designate, is hereby authorized. The powers, duties, and rights of such agent or agents shall be provided by contract, which may include provision that questions relating to the interpretation or performance thereof may be determined, to the extent provided therein, by arbitration or court proceedings. The Secretary in consideration of such termination of such existing lease is authorized to agree (a) that the lessees therein named shall be designated as the agents of the United States for the operation of said power plant; (b) that (except by mutual consent or in accordance with such provisions for termination for default as may be specified therein) such agency contract shall not be revocable or terminable; and (c) that suits or proceedings to restrain the termination of any such agency contract, otherwise than as therein provided, or for other appropriate equitable relief or remedies, may be maintained against the Secretary. Suits or other court proceedings pursuant to the foregoing provisions may be maintained in, and jurisdiction to hear and determine such suits or proceedings and to grant such relief or remedies is hereby conferred upon, the United States District Court for the District of Columbia, with the like right of appeal or review as in other like suits or proceedings in said court. The Secretary is hereby authorized to act for the United States in such arbitration proceedings. (54 Stat. 777; 43 U.S.C. § 618h)

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Sec. 10. [Act to be effective when Secretary finds existing lease power plant terminated and allottees have entered into contracts consenting to operation—If contracts not entered into prior to June 1, 1941, act shall be of no further effect.]—This Act shall be effective immediately for the purpose of the promulgation of charges, or the basis of computation thereof, and the execution of contracts authorized by the terms of this Act, but neither such charges, nor the basis of computation thereof, nor any such contract, shall be effective unless and until this Act shall be effective for all purposes. This Act shall take effect for all purposes when, but not before, the Secretary shall have found that provision has been made for the termination of the existing lease of the Boulder Power Plant and for the operation thereof as authorized by section 9 hereof, and that allottees obligated under contracts in force on the date of enactment of this Act to pay for at least 90 per centum of the firm energy shall have entered into contracts (1) consenting to such operation, and (2) containing such other provisions as the Secretary may deem necessary or proper for carrying out the purposes of this Act. For purposes of this section such 90 per centum shall be computed as of the end of the absorption periods provided for in regulations heretofore promulgated by the Secretary and in effect at the time of the enactment of this Act.

If contracts in accordance with the requirements of this section shall not have been entered into prior to June 1, 1941, this Act shall cease to be operative and shall be of no further force or effect. (54 Stat. 778; 43 U.S.C. § 618i)

EXPLANATORY NOTE

Effective Date of Act. The Boulder Canyon Project Adjustment Act became fully effective on May 29, 1941, the requirements of Sec. 10 of the Act having been met by the execution of a contract for the operation of the Boulder Power Plant by the City of Los Angeles and Southern California Edison Company, Ltd. as operating agents of the United States and by execution of contracts with allottees obligated under contracts in

force upon the date of enactment of the Act to pay for 100 per centum of the firm energy, as follows: City of Los Angeles, and its Department of Water and Power; Southern California Edison Company Ltd.; The Metropolitan Water District of Southern California; The City of Pasadena; State of Nevada; City of Burbank; City of Glendale; The Nevada-California Electric Corporation.

Sec. 11. [Any contractor refusing to modify its existing contract to conform to this act, shall continue under its existing contract.]—Any contractor for energy from the project failing or refusing to execute a contract modifying its existing contract to conform to this Act shall continue to pay the rates and charges provided for in its existing contract, subject to such periodic readjustments as are therein provided, in all respects as if this Act had not been passed, and so far as necessary to support such existing contract all of the provisions of the Project Act shall remain in effect, anything in this Act inconsistent therewith notwithstanding. (54 Stat. 778; 43 U.S.C. § 618j)

Sec. 12. [Definitions of terminology employed.]—The following terms wherever used in this Act shall have the following respective meanings:

“Project Act” shall mean the Boulder Canyon Project Act;

“Project” shall mean the works authorized by the Project Act to be constructed

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and owned by the United States, exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal;

"Secretary" shall mean the Secretary of the Interior of the United States;

"Firm energy" and "allottees" shall have the meaning assigned to such terms in regulations heretofore promulgated by the Secretary and in effect at the time of the enactment of this Act;

"Replacements" shall mean such replacements as may be necessary to keep the project in good operating condition during the period from June 1, 1937, to May 31, 1987, inclusive, but shall not include (except where used in conjunction with word "emergency" or the words "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe; and

"Year of operation" shall mean the period from and including June 1 of any calendar year to and including May 31 of the following calendar year. (54 Stat. 778; 43 U.S.C. § 618k)

Sec. 13. [Secretary to submit to Congress each January financial statement and complete report of operations.]—*Repealed.*

EXPLANATORY NOTE

Reporting Requirement Discontinued. The Act of August 30, 1954, 68 Stat. 966, repealed the requirement for the annual report and financial statement under section 13. The section read: "The Secretary of the Interior shall, in January of each year,

submit to the Congress a financial statement and a complete report of operations under this Act during the preceding year of operation as herein defined." The 1954 Act appears herein in chronological order.

Sec. 14. [Act shall not in anywise limit or prejudice any right of any State in or to waters of the Colorado River system under the Colorado River compact.]—Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement. Neither the promulgation of charges, or the basis of charges, nor anything contained in this Act or done thereunder, shall in anywise affect, limit, or prejudice any right of any State in or to the waters of the Colorado River system under the Colorado River compact. Sections 13 (b), 13 (c), and 13 (d) of the Project Act and all other provisions of said Project Act not inconsistent with the terms of this Act shall remain in full force and effect. (54 Stat. 779; 43 U.S.C. § 618m)

Sec. 15. [Laborers and mechanics shall be paid not less than prevailing rate of wages.]—All laborers and mechanics employed in the construction of any part of the project, or in the operation, maintenance, or replacement of any part of the Boulder Dam, shall be paid not less than the prevailing rate of wages or compensation for work of a similar nature prevailing in the locality of the project. In the event any dispute arises as to what are the prevailing rates, the determination thereof shall be made by the Secretary of the Interior, and his decision, subject to the concurrence of the Secretary of Labor, shall be final. (54 Stat. 779; 43 U.S.C. § 618n)

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NOTES OF OPINIONS

1. Employees covered

The legislative history of the Act leads to the conclusion that section 15 applies only to employees of the Federal Government and not to employees of the non-Federal operating agents. Letter of First Assistant Secretary Burlew to Senator McCarran, May 2, 1947.

The first sentence of section 15 makes a

distinction between two groups of ungraded laborers and mechanics, namely, those engaged in construction and those engaged in operation, maintenance or replacement. Members of the two groups doing the same type of work may be paid at different rates if the facts disclose that such a distinction prevails in the locality. Solicitor White Opinion, 60 I.D. 47 (1947).

Sec. 16. [Short title.]—This Act may be cited as “Boulder Canyon Project Adjustment Act”. (54 Stat. 779; 43 U.S.C. § 618o)

EXPLANATORY NOTE

Legislative History. H.R. 9877, Public Law 756 in the 76th Congress. H.R. Rept. No. 2328. H.R. Rept. No. 2745 (conference

report). H.R. Rept. No. 2482 (on H. Res. 503).